FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]
[redacted]

DECISION

MPA/150653

PRELIMINARY RECITALS

Pursuant to a petition filed July 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 20, 2013, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted]
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Mary Chucka
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) is a resident of Eau Claire County.
2. On December 3, 2012, the petitioner with her provider, [redacted], L.L.C., requested a manual wheelchair at a cost of $2,036. The Office of Inspector General denied the request on

January 25, 2013. That notice informed the petitioner that she must file an appeal with the Division of Hearings and Appeals or the local county agency by March 11, 2013.

3. The petitioner filed an appeal with the Division of Hearings and Appeals on July 15, 2013.

DISCUSSION

The petitioner requests that the medical assistance program pay for a manual wheelchair, a type of durable medical equipment that must be authorized by the Office of Inspector General before the medical assistance program will pay for it. *See* Wis. Admin. Code § DHS 107.24. The inspector general denied her request on January 25, 2013, and told her she must appeal by March 11, 2013. The Division of Hearings and Appeals did not receive an appeal until July 15, 2013. However, the petitioner's mother contends that she sent the appeal to the Office of Inspector General on March 5, 2013.

Those seeking medical assistance benefits must appeal within 45 days of the "effective date of the adverse action." An appeal is "considered filed on the date of actual receipt by the division or agency, or the date of the postmark, whichever is earlier." Wis. Admin. Code, § HA 3.05(3)(c). The request "may be made to the agency or the division." If an agency receives a hearing request it must "immediately date-stamp the request and forward it to the division [of hearings and appeals]." Wis. Admin. Code, § HA 3.05(2)(a)(a)

There is no evidence other than the statement by the petitioner's mother that the request was sent anywhere in March: the petitioner does not have a fax receipt, and the Office of Inspector General did not provide a record of receiving it. The petitioner's mother did sound sincere, but there is not enough before me to find by the preponderance of the credible evidence that she submitted her appeal on time. When an appeal is late, the Division of Hearings and Appeals loses its legal authority to consider it, meaning that it must dismiss the appeal.

I note that nothing prevents the petitioner from filing a new request for the wheelchair. If she does, she and her provider should consider the objections raised by Mary Chucka in her August 2, 2013, letter explaining the denial.

CONCLUSIONS OF LAW

There is no jurisdiction to consider the petitioner's appeal because it is untimely.

THEREFORE, it is **ORDERED**

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of September, 2013

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\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 13, 2013.

Division of Health Care Access And Accountability